JAMES R. TAYLOR

IBLA 83-979 Decided April 10, 1984

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application C-37021.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Applications: Filing

Where an automated simultaneous oil and gas lease application Part A, form 3112-6, is either not on file at the time of the drawing or on file and contains a defect (more than one circle darkened per column) which prevents the computer from fully completing the automated processing of the application, the application is properly deemed to be unacceptable.

APPEARANCES: J. O. Young, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

On August 5, 1983, the Colorado State Office, Bureau of Land Management (BLM), rejected the simultaneous oil and gas lease application (C-37021) of James R. Taylor drawn with second priority in the January 1983 drawing for parcel CO-256. The first-drawn applicant had previously been disqualified for failing to timely submit the first year's rental.

BLM's decision stated that the application was rejected "for failure to properly complete the application, automated form 3112-6 and 3112-6a." It further stated "[i]t has been determined by the Simultaneous Unit, Wyoming State Office, that applicant has no Part A (form 3112-6) on file." Taylor has appealed the rejection.

On appeal counsel for appellant asserts that appellant filed Part A (form 3112-6) of the automated simultaneous oil and gas lease application with BLM. Counsel provides a copy of the Part A as exhibit "A" to the statement of reasons. The Part A contains the full name of appellant (James Richard Taylor) printed in the space for "PRINT OR TYPE APPLICANT'S FULL NAME." In the blocks provided for the first 16 letters of the applicant's last name and the two blocks for the applicant's initials appear appellant's last name (Taylor) and his initials (J. R.).

Below these boxes on Part A appear small circles or bubbles. The applicant is instructed to fill in the circles corresponding with the letters placed in the boxes. The bubbles are designed to be read by computer and in the automated simultaneous system are more important than the letters printed in the boxes. On the Part A in this case two circles were darkened in the same column.

In the column in which the circle for the letter O should have been darkened, both the circle for O and the circle for R were darkened. No mark was made in any of the circles under the letter R. The remainder of Part A is properly completed, including appellant's address and social security number. There is no defect in Part B (form 3112-6a) of the simultaneous oil and gas lease application filed by appellant and selected in the January 1983 drawing.

Counsel's arguments on appeal relate to the de minimis nature of the error on the Part A described. With respect to the ground for rejection counsel states only that at the time of the drawing on January 10, 1983, appellant's Part A "was on file on the form attached to this statement of reasons as exhibit 'A.'"

Our review of the case record reveals the following probable sequence of events. Appellant filed both Part A and Part B of the simultaneous application for the January 1983 drawing (November 1982 filing period). At some unknown date appellant's Part A was returned to him by the Wyoming State Office, BLM. This is disclosed by an undated document in the case record. It is a copy of form "ASOG [Automated Simultaneous Oil and Gas] Unacceptable Filing Notice" directed to "James Richard Taylor." Under "Category II--Unacceptable Application Data" on the form there are check marks as follows:

(X) Mandatory Fields (Part A) Circles not Darkened
(X) Last Name & Initials or Organization ( ) City ( ) SSN/EIN/
BAN [1/]

It appears from this notice that when appellant filed his Part A with the Wyoming State Office, it was returned to him because the circles were not darkened for his last name and initials. 2/ The "Selection Results By Parcel Number" for the January 1983 drawing show for parcel CO-256 the following under second place--"INVALID APPLN ADJUDICATION PENDING."

At some undisclosed time, appellant submitted to the Wyoming State Office, BLM, and/or the Colorado State Office, BLM, the Part A described in the statement of reasons along with the copy of the "ASOG Unacceptable Filing

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1/ Directly under these two on the form is the following: "( ) More than one Circle Darkened per Column--OMR [Optical Mark Reader] Reject." This category was not checked by the Wyoming State Office.

2/ Although appellant states that his Part A was on file at the time of the drawing, there is no independent evidence that a Part A was returned to the Wyoming State Office prior to the drawing.

Notice." In the lower right-hand corner of that notice is a printed statement which we assume was made by appellant. It states:

Andrew Tarshis
Chief Branch Records

> Note: My filing went in on Granby but I didn't win. Reason that I didn't receive status notice was that Form "A" was wrong.

The notice also contains a written statement initialed by a Colorado State Office, BLM, employee in the upper right-hand corner, "[t]his copy submitted by Mr. Taylor to determine what was wrong." The same employee also noted on the middle of the page "2 circles darkened in same column O&R in last name."

[1] The record in this case is such that we are unable to determine the exact status of appellant's application at the time of the January 1983 drawing. However, BLM's decision addresses one circumstance and appellant's statement of reasons raises the possibility of another. It is unnecessary for us to determine which is the true circumstance because our analysis of each of the possibilities leads us to the same result.

First, we will address the case as though no Part A were on file. The BLM decision gave this as the ground for its action. For the purposes of this discussion we will assume the following facts. A Part A was filed by appellant, probably at the time his Part B was filed. At an uncertain date it was returned to him because the circles were not darkened for his name. No Part A was on file for appellant at the time the Colorado State Office contacted the Wyoming State Office.

Under these circumstances appellant's application was unacceptable. The failure to have a Part A on file prevented the automated processing of appellant's application. In Shaw Resources, Inc., 79 IBLA 153, 175-76, 91 I.D. 122, 134-35 (1984), the Board held that the term "prevents automated processing" includes "any deficiency which prohibits the computer from fully completing the automated program, including not only the selection of applications for specific parcels, but the matching of Part B with Part A." In Shaw the Board concluded that a mismatched Part A and Part B (in the automated sections) rendered the application unacceptable. A fortiori, the failure to have a Part A on file renders the application unacceptable.

Our use of the word "unacceptable" in this context is purposeful. As was pointed out in Shaw Resources, Inc., supra at 157, 91 I.D. at 124, the failure to differentiate between the use of "rejected" or "unacceptable" with respect to a simultaneous application resulted in inconsistent decisions regarding the retention or return of filing fees. In this case BLM "rejected" the application; however, under the regulations the proper action in this case is a finding of unacceptability. Where an application is deemed unacceptable, all filing fees submitted with the application form are returned after assessment of a $75 processing fee. Shaw Resources, Inc., supra at 176, 91 I.D. at 135.

We now turn to the facts as alleged by appellant. Appellant claims that a Part A was on file. For the purpose of this discussion we will assume that the Part A, as described by appellant, was on file at the time of the drawing.

Appellant calls our attention to Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), in which the court reversed the Department's rejection of an oil and gas lease application which was undated. The court found that notwithstanding the fact that the entry of a date within the filing period was required by regulation, the omission was a "trivial defect" and a "nonsubstantive error." 717 F.2d at 516. Appellant believes the defect in this case is likewise trivial and nonsubstantive. We disagree.

The defect in this case (more than one circle darkened per column) prevented the computer from fully completing the automated processing of the application. That is not a trivial error. While it is not an error requiring rejection of the application and retention of the filing fees because it does not involve failure to provide information necessary to police the system to prevent fraud or abuse, the error does require a finding that the application is unacceptable, since it prevents automated processing. See Shaw Resources, Inc., supra. Thus, we do not find that Conway is controlling in this case. 3/

Regardless of whether, as the BLM decision states, no Part A was on file or whether, as appellant contends, the defective Part A was on file, the result is the same. The application is unacceptable. 4/

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Bruce R. Harris
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Edward W. Stuebing
Administrative Judge

3/ The Board set forth in Shaw Resources, Inc., supra at 178-79, 91 I.D. at 136-37, those situations which it regarded to be controlled by Conway. See also Corinth Partnership, 80 IBLA 31, 34 (1984).

4/ While we have stated that a finding of unacceptability requires the return of filing fees in excess of a $75 processing fee, we note that in this case appellant's application was for only one parcel. Therefore, no refund is available.